

FIREARMS (EXCERPT)

Act 372 of 1927

28.422 License to purchase, carry, or transport pistol; issuance; qualifications; applications; sale of pistol; exemptions; basic pistol safety brochure; forging application; implementation during business hours.

Sec. 2. (1) Except as provided in subsection (2), a person shall not purchase, carry, or transport a pistol in this state without first having obtained a license for the pistol as prescribed in this section.

(2) A person who brings a pistol into this state who is on leave from active duty with the armed forces of the United States or who has been discharged from active duty with the armed forces of the United States shall obtain a license for the pistol within 30 days after his or her arrival in this state.

(3) The commissioner or chief of police of a city, township, or village police department that issues licenses to purchase, carry, or transport pistols, or his or her duly authorized deputy, or the sheriff or his or her duly authorized deputy, in the parts of a county not included within a city, township, or village having an organized police department, in discharging the duty to issue licenses shall with due speed and diligence issue licenses to purchase, carry, or transport pistols to qualified applicants residing within the city, village, township, or county, as applicable unless he or she has probable cause to believe that the applicant would be a threat to himself or herself or to other individuals, or would commit an offense with the pistol that would violate a law of this or another state or of the United States. An applicant is qualified if all of the following circumstances exist:

(a) The person is not subject to an order or disposition for which he or she has received notice and an opportunity for a hearing, and which was entered into the law enforcement information network pursuant to any of the following:

(i) Section 464a(1) of the mental health code, 1974 PA 258, MCL 330.1464a.

(ii) Section 5107 of the estates and protected individuals code, 1998 PA 386, MCL 700.5107, or section 444a of former 1978 PA 642.

(iii) Section 2950(9) of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950.

(iv) Section 2950a(7) of 1961 PA 236, MCL 600.2950a.

(v) Section 14 of 1846 RS 84, MCL 552.14.

(vi) Section 6b(5) of chapter V of the code of criminal procedure, 1927 PA 175, MCL 765.6b, if the order has a condition imposed pursuant to section 6b(3) of chapter V of 1927 PA 175, MCL 765.6b.

(vii) Section 16b(1) of chapter IX of 1927 PA 175, MCL 769.16b.

(b) The person is 18 years of age or older or, if the seller is licensed pursuant to section 923 of title 18 of the United States Code, 18 USC 923, is 21 years of age or older.

(c) The person is a citizen of the United States and is a legal resident of this state.

(d) A felony charge against the person is not pending at the time of application.

(e) The person is not prohibited from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under section 224f of the Michigan penal code, 1931 PA 328, MCL 750.224f.

(f) The person has not been adjudged insane in this state or elsewhere unless he or she has been adjudged restored to sanity by court order.

(g) The person is not under an order of involuntary commitment in an inpatient or outpatient setting due to mental illness.

(h) The person has not been adjudged legally incapacitated in this state or elsewhere. This subdivision does not apply to a person who has had his or her legal capacity restored by order of the court.

(i) The person correctly answers 70% or more of the questions on a basic pistol safety review questionnaire approved by the basic pistol safety review board and provided to the individual free of charge by the licensing authority. If the person fails to correctly answer 70% or more of the questions on the basic pistol safety review questionnaire, the licensing authority shall inform the person of the questions he or she answered incorrectly and allow the person to attempt to complete another basic pistol safety review questionnaire. The person shall not be allowed to attempt to complete more than 2 basic pistol safety review questionnaires on any single day. The licensing authority shall allow the person to attempt to complete the questionnaire during normal business hours on the day the person applies for his or her license.

(4) Applications for licenses under this section shall be signed by the applicant under oath upon forms provided by the director of the department of state police. Licenses to purchase, carry, or transport pistols shall be executed in triplicate upon forms provided by the director of the department of state police and shall be signed by the licensing authority. Three copies of the license shall be delivered to the applicant by the licensing authority.

(5) Upon the sale of the pistol, the seller shall fill out the license forms describing the pistol sold, together with the date of sale, and sign his or her name in ink indicating that the pistol was sold to the licensee. The licensee shall also sign his or her name in ink indicating the purchase of the pistol from the seller. The seller may retain a copy of the license as a record of the sale of the pistol. The licensee shall return 2 copies of the license to the licensing authority within 10 days following the purchase of the pistol.

(6) One copy of the license shall be retained by the licensing authority as an official record for a period of 6 years. The other copy of the license shall be forwarded by the licensing authority within 48 hours to the director of the department of state police. A license is void unless used within 10 days after the date of its issue.

(7) This section does not apply to the purchase of pistols from wholesalers by dealers regularly engaged in the business of selling pistols at retail, or to the sale, barter, or exchange of pistols kept as relics or curios not made for modern ammunition or permanently deactivated. This section does not prevent the transfer of ownership of pistols that are inherited if the license to purchase is approved by the commissioner or chief of police, sheriff, or their authorized deputies, and signed by the personal representative of the estate or by the next of kin having authority to dispose of the pistol.

(8) The licensing authority shall provide a basic pistol safety brochure to each applicant for a license under this section before the applicant answers the basic pistol safety review questionnaire. A basic pistol safety brochure shall contain, but is not limited to providing, information on all of the following subjects:

(a) Rules for safe handling and use of pistols.

(b) Safe storage of pistols.

(c) Nomenclature and description of various types of pistols.

(d) The responsibilities of owning a pistol.

(9) The basic pistol safety brochure shall be supplied in addition to the safety pamphlet required by section 9b.

(10) The basic pistol safety brochure required in subsection (8) shall be produced by a national nonprofit membership organization that provides voluntary pistol safety programs that include training individuals in the safe handling and use of pistols.

(11) A person who forges any matter on an application for a license under this section is guilty of a felony, punishable by imprisonment for not more than 4 years or a fine of not more than \$2,000.00, or both.

(12) A licensing authority shall implement this section during all of the licensing authority's normal business hours and shall set hours for implementation that allow an applicant to use the license within the time period set forth in subsection (6).

History: 1927, Act 372, Eff. Sept. 5, 1927;—CL 1929, 16750;—Am. 1931, Act 333, Imd. Eff. June 16, 1931;—Am. 1941, Act 112, Imd. Eff. May 21, 1941;—Am. 1943, Act 51, Imd. Eff. Mar. 30, 1943;—CL 1948, 28.422;—Am. 1949, Act 170, Eff. Sept. 23, 1949;—Am. 1957, Act 259, Eff. Sept. 27, 1957;—Am. 1964, Act 216, Eff. Aug. 28, 1964;—Am. 1967, Act 158, Eff. Nov. 2, 1967;—Am. 1968, Act 301, Eff. Nov. 15, 1968;—Am. 1972, Act 15, Imd. Eff. Feb. 19, 1972;—Am. 1986, Act 161, Eff. Aug. 1, 1986;—Am. 1990, Act 320, Eff. Mar. 28, 1991;—Am. 1992, Act 219, Imd. Eff. Oct. 13, 1992;—Am. 1992, Act 220, Imd. Eff. Oct. 13, 1992;—Am. 1994, Act 338, Eff. Apr. 1, 1996;—Am. 2004, Act 101, Imd. Eff. May 13, 2004.

Constitutionality: The Michigan Court of Appeals held in Chan v City of Troy, 220 Mich App 376; 559 NW2d 374 (1997), that the citizen requirement, now MCL 28.422(3)(c), for a permit to purchase a pistol contained in MCL 28.422(3)(b) violates the Equal Protection Clause of the Fourteenth Amendment and is unconstitutional.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: Right to Carry

Popular name: Shall Issue

FIREARMS (EXCERPT)

Act 372 of 1927

28.426 Issuance of license; conditions.

Sec. 6. A license shall not be issued to an applicant under section 2 or 5b unless both of the following apply:

(a) The issuing agency has determined through the federal national instant criminal background check system (NICS) that the applicant is not prohibited under federal law from possessing or transporting a firearm.

(b) If the applicant is not a United States citizen, the issuing agency has verified through the United States immigration and customs enforcement databases that the applicant is not an illegal alien or a nonimmigrant alien.

History: Add. 2005, Act 242, Imd. Eff. Nov. 22, 2005.

Compiler's note: Former § 28.426, which pertained to concealed weapon licensing board, was repealed by Act 381 of 200, Eff. July 1, 2001.

Popular name: CCW

Popular name: Concealed Weapons

Popular name: Right to Carry

Popular name: Shall Issue

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

600.2950 Personal protection order; restraining or enjoining spouse, former spouse, individual with child in common, individual in dating relationship, or person residing or having resided in same household from certain conduct; respondent required to carry concealed weapon; omitting address of residence from documents; issuance, contents, effectiveness, duration, and service of personal protection order; entering order into L.E.I.N.; notice; failure to comply with order; false statement to court; enforcement; minor; definitions.

Sec. 2950. (1) Except as provided in subsections (27) and (28), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin a spouse, a former spouse, an individual with whom he or she has had a child in common, an individual with whom he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner from doing 1 or more of the following:

- (a) Entering onto premises.
- (b) Assaulting, attacking, beating, molesting, or wounding a named individual.
- (c) Threatening to kill or physically injure a named individual.
- (d) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
- (e) Purchasing or possessing a firearm.
- (f) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.
- (g) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
- (h) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent about the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.
- (i) Engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.
- (j) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence.

(2) If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer certified by the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her employment, the petitioner shall notify the court of the respondent's occupation prior to the issuance of the personal protection order. This subsection does not apply to a petitioner who does not know the respondent's occupation.

(3) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court with a mailing address.

(4) The court shall issue a personal protection order under this section if the court determines that there is reasonable cause to believe that the individual to be restrained or enjoined may commit 1 or more of the acts listed in subsection (1). In determining whether reasonable cause exists, the court shall consider all of the following:

- (a) Testimony, documents, or other evidence offered in support of the request for a personal protection order.

(b) Whether the individual to be restrained or enjoined has previously committed or threatened to commit 1 or more of the acts listed in subsection (1).

(5) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1)(a) if all of the following apply:

(a) The individual to be restrained or enjoined is not the spouse of the moving party.

(b) The individual to be restrained or enjoined or the parent, guardian, or custodian of the minor to be restrained or enjoined has a property interest in the premises.

(c) The moving party or the parent, guardian, or custodian of a minor petitioner has no property interest in the premises.

(6) A court shall not refuse to issue a personal protection order solely due to the absence of any of the following:

(a) A police report.

(b) A medical report.

(c) A report or finding of an administrative agency.

(d) Physical signs of abuse or violence.

(7) If the court refuses to grant a personal protection order, it shall state immediately in writing the specific reasons it refused to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons it refuses to issue a personal protection order.

(8) A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court pursuant to subsection (1).

(9) A personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge. Upon service, a personal protection order may also be enforced by another state, an Indian tribe, or a territory of the United States.

(10) The court shall designate the law enforcement agency that is responsible for entering the personal protection order into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(11) A personal protection order shall include all of the following, and to the extent practicable the following shall be contained in a single form:

(a) A statement that the personal protection order has been entered to restrain or enjoin conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following:

(i) If the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the court, and that if he or she is found guilty of criminal contempt, he or she shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.

(ii) If the respondent is less than 17 years of age, immediate apprehension or being taken into custody, and subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(iii) If the respondent violates the personal protection order in a jurisdiction other than this state, the respondent is subject to the enforcement procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

(b) A statement that the personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge, and that, upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.

(c) A statement listing the type or types of conduct enjoined.

(d) An expiration date stated clearly on the face of the order.

(e) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency.

(f) The law enforcement agency designated by the court to enter the personal protection order into the law enforcement information network.

(g) For ex parte orders, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined has been served or has received actual notice of the order and that motion forms and filing instructions are available from the clerk of the court.

(12) An ex parte personal protection order shall be issued and effective without written or oral notice to the individual restrained or enjoined or his or her attorney if it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.

(13) A personal protection order issued under subsection (12) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. The motion to modify or rescind the personal protection order shall be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the personal protection order unless good cause is shown for filing the motion after the 14 days have elapsed.

(14) Except as otherwise provided in this subsection, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind. If the respondent is a person described in subsection (2) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the filing of the motion to modify or rescind.

(15) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance and without requiring a proof of service on the individual restrained or enjoined:

(a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.

(b) Provide the petitioner with not less than 2 true copies of the personal protection order.

(c) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency, if known, about the existence of the personal protection order.

(d) If the personal protection order prohibits respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent's county of residence about the existence and contents of the personal protection order.

(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order.

(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order.

(16) The clerk of the court shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court in subsection (10) to be immediately entered into the law enforcement information network.

(17) The law enforcement agency that receives a true copy of the personal protection order under subsection (15) or (16) shall immediately and without requiring proof of service enter the personal protection order into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(18) A personal protection order issued under this section shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner provided in the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 18 years of age, the parent, guardian, or custodian of that individual shall also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian of the individual restrained or enjoined. A proof of service or proof of oral notice shall be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or its immediate enforcement under subsections (21) and (22).

(19) The clerk of the court shall immediately notify the law enforcement agency that received the personal protection order under subsection (15) or (16) if either of the following occurs:

(a) The clerk of the court has received proof that the individual restrained or enjoined has been served.

(b) The personal protection order is rescinded, modified, or extended by court order.

(20) The law enforcement agency that receives information under subsection (19) shall enter the information or cause the information to be entered into the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(21) Subject to subsection (22), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has

verified its existence on the law enforcement information network as provided by the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(22) If the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the law enforcement information network that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court issuing the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined shall be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. The failure to immediately comply with the personal protection order shall be grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

(23) An individual who is 17 years of age or more and who refuses or fails to comply with a personal protection order under this section is subject to the criminal contempt powers of the court and, if found guilty, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual who is less than 17 years of age and who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty provided for under this section may be imposed in addition to a penalty that may be imposed for another criminal offense arising from the same conduct.

(24) An individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.

(25) A personal protection order issued under this section is also enforceable under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and section 15b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15b.

(26) A personal protection order issued under this section is also enforceable under chapter 17.

(27) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) if any of the following apply:

(a) The respondent is the unemancipated minor child of the petitioner.

(b) The petitioner is the unemancipated minor child of the respondent.

(c) The respondent is a minor child less than 10 years of age.

(28) If the respondent is less than 18 years of age, issuance of a personal protection order under this section is subject to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(29) A personal protection order that is issued prior to the effective date of the amendatory act that added this subsection is not invalid on the ground that it does not comply with 1 or more of the requirements added by this amendatory act.

(30) As used in this section:

(a) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(b) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.

(c) "Personal protection order" means an injunctive order issued by the circuit court or the family division of circuit court restraining or enjoining activity and individuals listed in subsection (1).

History: Add. 1983, Act 228, Imd. Eff. Nov. 28, 1983;—Am. 1994, Act 58, Eff. July 1, 1994;—Am. 1994, Act 61, Eff. July 1, 1994;—Am. 1994, Act 341, Eff. Apr. 1, 1996;—Am. 1994, Act 402, Eff. Apr. 1, 1995;—Am. 1996, Act 10, Eff. June 1, 1996;—Am. 1997, Act 115, Imd. Eff. Aug. 21, 1997;—Am. 1998, Act 477, Eff. Mar. 1, 1999;—Am. 1999, Act 268, Eff. July 1, 2000;—Am. 2001, Act 200, Eff. Apr. 1, 2002.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

600.2950a Personal protection order restraining or enjoining individual from engaging in conduct prohibited under §§ 750.411h and 750.411i; facts alleging stalking; respondent required to carry concealed weapon; omitting address of residence from documents;

reasons for issuing or refusing to grant order; mutual order prohibited; effectiveness, issuance, contents, and duration of order; duties of court clerk; entering order into L.E.I.N.; service; notice to law enforcement agency; enforcement; refusal or failure to comply; false statement to court; purchase or possession of firearm; minor; issuance to prisoner prohibited; definitions.

Sec. 2950a. (1) Except as provided in subsections (25) and (26), by commencing an independent action to obtain relief under this section, by joining a claim to an action, or by filing a motion in an action in which the petitioner and the individual to be restrained or enjoined are parties, an individual may petition the family division of circuit court to enter a personal protection order to restrain or enjoin an individual from engaging in conduct that is prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i. Relief shall not be granted unless the petition alleges facts that constitute stalking as defined in section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i. Relief may be sought and granted under this section whether or not the individual to be restrained or enjoined has been charged or convicted under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i, for the alleged violation.

(2) If the respondent is a person who is issued a license to carry a concealed weapon and is required to carry a weapon as a condition of his or her employment, a police officer certified by the commission on law enforcement standards act, 1965 PA 203, MCL 28.601 to 28.616, a sheriff, a deputy sheriff or a member of the Michigan department of state police, a local corrections officer, a department of corrections employee, or a federal law enforcement officer who carries a firearm during the normal course of his or her employment, the petitioner shall notify the court of the respondent's occupation prior to the issuance of the personal protection order. This subsection does not apply to a petitioner who does not know the respondent's occupation.

(3) A petitioner may omit his or her address of residence from documents filed with the court under this section. If a petitioner omits his or her address of residence, the petitioner shall provide the court a mailing address.

(4) If a court refuses to grant a personal protection order, the court shall immediately state in writing the specific reasons for issuing or refusing to issue a personal protection order. If a hearing is held, the court shall also immediately state on the record the specific reasons for issuing or refusing to issue a personal protection order.

(5) A personal protection order shall not be made mutual. Correlative separate personal protection orders are prohibited unless both parties have properly petitioned the court according to subsection (1).

(6) A personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge. Upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.

(7) The court shall designate the law enforcement agency that is responsible for entering the personal protection order into the L.E.I.N.

(8) A personal protection order issued under this section shall include all of the following, and to the extent practicable contained in a single form:

(a) A statement that the personal protection order has been entered to enjoin or restrain conduct listed in the order and that violation of the personal protection order will subject the individual restrained or enjoined to 1 or more of the following:

(i) If the respondent is 17 years of age or more, immediate arrest and the civil and criminal contempt powers of the court, and that if he or she is found guilty of criminal contempt, he or she shall be imprisoned for not more than 93 days and may be fined not more than \$500.00.

(ii) If the respondent is less than 17 years of age, to immediate apprehension or being taken into custody, and subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(iii) If the respondent violates the personal protection order in a jurisdiction other than this state, the respondent is subject to the enforcement procedures and penalties of the state, Indian tribe, or United States territory under whose jurisdiction the violation occurred.

(b) A statement that the personal protection order is effective and immediately enforceable anywhere in this state when signed by a judge, and that upon service, a personal protection order also may be enforced by another state, an Indian tribe, or a territory of the United States.

(c) A statement listing each type of conduct enjoined.

(d) An expiration date stated clearly on the face of the order.

(e) A statement that the personal protection order is enforceable anywhere in Michigan by any law enforcement agency.

(f) The law enforcement agency designated by the court to enter the personal protection order into the L.E.I.N.

(g) For an ex parte order, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing within 14 days after the individual restrained or enjoined has been served or has received actual notice of the personal protection order and that motion forms and filing instructions are available from the clerk of the court.

(9) An ex parte personal protection order shall not be issued and effective without written or oral notice to the individual enjoined or his or her attorney unless it clearly appears from specific facts shown by verified complaint, written motion, or affidavit that immediate and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will precipitate adverse action before a personal protection order can be issued.

(10) A personal protection order issued under subsection (9) is valid for not less than 182 days. The individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing under the Michigan court rules. The motion to modify or rescind the personal protection order shall be filed within 14 days after the order is served or after the individual restrained or enjoined has received actual notice of the personal protection order unless good cause is shown for filing the motion after 14 days have elapsed.

(11) Except as otherwise provided in this subsection, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 14 days after the filing of the motion to modify or rescind. If the respondent is a person described in subsection (2) and the personal protection order prohibits him or her from purchasing or possessing a firearm, the court shall schedule a hearing on the motion to modify or rescind the ex parte personal protection order within 5 days after the filing of the motion to modify or rescind.

(12) The clerk of the court that issues a personal protection order shall do all of the following immediately upon issuance without requiring proof of service on the individual restrained or enjoined:

(a) File a true copy of the personal protection order with the law enforcement agency designated by the court in the personal protection order.

(b) Provide petitioner with not less than 2 true copies of the personal protection order.

(c) If respondent is identified in the pleadings as a law enforcement officer, notify the officer's employing law enforcement agency about the existence of the personal protection order.

(d) If the personal protection order prohibits the respondent from purchasing or possessing a firearm, notify the concealed weapon licensing board in respondent's county of residence about the existence and content of the personal protection order.

(e) If the respondent is identified in the pleadings as a department of corrections employee, notify the state department of corrections about the existence of the personal protection order.

(f) If the respondent is identified in the pleadings as being a person who may have access to information concerning the petitioner or a child of the petitioner or respondent and that information is contained in friend of the court records, notify the friend of the court for the county in which the information is located about the existence of the personal protection order.

(13) The clerk of the court shall inform the petitioner that he or she may take a true copy of the personal protection order to the law enforcement agency designated by the court in subsection (7) to be immediately entered into the L.E.I.N.

(14) The law enforcement agency that receives a true copy of the personal protection order under subsection (12) or (13) shall immediately, without requiring proof of service, enter the personal protection order into the L.E.I.N.

(15) A personal protection order issued under this section shall be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the individual restrained or enjoined or by any other manner provided in the Michigan court rules. If the individual restrained or enjoined has not been served, a law enforcement officer or clerk of the court who knows that a personal protection order exists may, at any time, serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. If the respondent is less than 18 years of age, the parent, guardian, or custodian of that individual shall also be served personally or by registered or certified mail, return receipt requested, delivery restricted to the addressee at the last known address or addresses of the parent, guardian, or custodian of the individual restrained or enjoined. A proof of service or proof of oral

notice shall be filed with the clerk of the court issuing the personal protection order. This subsection does not prohibit the immediate effectiveness of a personal protection order or immediate enforcement under subsection (18) or (19).

(16) The clerk of the court shall immediately notify the law enforcement agency that received the personal protection order under subsection (12) or (13) if either of the following occurs:

(a) The clerk of the court has received proof that the individual restrained or enjoined has been served.

(b) The personal protection order is rescinded, modified, or extended by court order.

(17) The law enforcement agency that receives information under subsection (16) shall enter the information or cause the information to be entered into the L.E.I.N.

(18) Subject to subsection (19), a personal protection order is immediately enforceable anywhere in this state by any law enforcement agency that has received a true copy of the order, is shown a copy of it, or has verified its existence on the L.E.I.N.

(19) If the individual restrained or enjoined has not been served, the law enforcement agency or officer responding to a call alleging a violation of a personal protection order shall serve the individual restrained or enjoined with a true copy of the order or advise the individual restrained or enjoined about the existence of the personal protection order, the specific conduct enjoined, the penalties for violating the order, and where the individual restrained or enjoined may obtain a copy of the order. The law enforcement officer shall enforce the personal protection order and immediately enter or cause to be entered into the L.E.I.N. that the individual restrained or enjoined has actual notice of the personal protection order. The law enforcement officer also shall file a proof of service or proof of oral notice with the clerk of the court issuing the personal protection order. If the individual restrained or enjoined has not received notice of the personal protection order, the individual restrained or enjoined shall be given an opportunity to comply with the personal protection order before the law enforcement officer makes a custodial arrest for violation of the personal protection order. Failure to immediately comply with the personal protection order is grounds for an immediate custodial arrest. This subsection does not preclude an arrest under section 15 or 15a of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15 and 764.15a, or a proceeding under section 14 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.14.

(20) An individual 17 years of age or more who refuses or fails to comply with a personal protection order issued under this section is subject to the criminal contempt powers of the court and, if found guilty of criminal contempt, shall be imprisoned for not more than 93 days and may be fined not more than \$500.00. An individual less than 17 years of age who refuses or fails to comply with a personal protection order issued under this section is subject to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18. The criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct.

(21) An individual who knowingly and intentionally makes a false statement to the court in support of his or her petition for a personal protection order is subject to the contempt powers of the court.

(22) A personal protection order issued under this section is also enforceable under chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32, and section 15b of chapter IV of the code of criminal procedure, 1927 PA 175, MCL 764.15b.

(23) A personal protection order issued under this section may enjoin or restrain an individual from purchasing or possessing a firearm.

(24) A personal protection order issued under this section is also enforceable under chapter 17.

(25) A court shall not issue a personal protection order that restrains or enjoins conduct described in subsection (1) if any of the following apply:

(a) The respondent is the unemancipated minor child of the petitioner.

(b) The petitioner is the unemancipated minor child of the respondent.

(c) The respondent is a minor child less than 10 years of age.

(26) If the respondent is less than 18 years of age, issuance of a personal protection order under this section is subject to chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.1 to 712A.32.

(27) A personal protection order that is issued before March 1, 1999 is not invalid on the ground that it does not comply with 1 or more of the requirements added by 1998 PA 476.

(28) A court shall not issue a personal protection order under this section if the petitioner is a prisoner. If a personal protection order is issued in violation of this subsection, a court shall rescind the personal protection order upon notification and verification that the petitioner is a prisoner.

(29) As used in this section:

(a) "Federal law enforcement officer" means an officer or agent employed by a law enforcement agency of the United States government whose primary responsibility is the enforcement of laws of the United States.

(b) "L.E.I.N." means the law enforcement information network administered under the L.E.I.N. policy council act of 1974, 1974 PA 163, MCL 28.211 to 28.216.

(c) "Personal protection order" means an injunctive order issued by circuit court or the family division of circuit court restraining or enjoining conduct prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

(d) "Prisoner" means a person subject to incarceration, detention, or admission to a prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of federal, state, or local law or the terms and conditions of parole, probation, pretrial release, or a diversionary program.

History: Add. 1992, Act 262, Eff. Jan. 1, 1993;—Am. 1994, Act 61, Eff. July 1, 1994;—Am. 1994, Act 341, Eff. Apr. 1, 1996;—Am. 1994, Act 404, Eff. Apr. 1, 1995;—Am. 1997, Act 115, Imd. Eff. Aug. 21, 1997;—Am. 1998, Act 476, Eff. Mar. 1, 1999;—Am. 1999, Act 268, Eff. July 1, 2000;—Am. 2001, Act 196, Eff. Apr. 1, 2002;—Am. 2001, Act 201, Eff. Apr. 1, 2002.

REVISED JUDICATURE ACT OF 1961 (EXCERPT)

Act 236 of 1961

600.2954 Maintaining civil action against individual engaging in prohibited conduct; "victim" defined.

Sec. 2954. (1) A victim may maintain a civil action against an individual who engages in conduct that is prohibited under section 411h or 411i of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.411h and 750.411i of the Michigan Compiled Laws, for damages incurred by the victim as a result of that conduct. A victim may also seek and be awarded exemplary damages, costs of the action, and reasonable attorney fees in an action brought under this section.

(2) A civil action may be maintained under subsection (1) whether or not the individual who is alleged to have engaged in conduct prohibited under section 411h or 411i of Act No. 328 of the Public Acts of 1931 has been charged or convicted under section 411h or 411i of Act No. 328 of the Public Acts of 1931 for the alleged violation.

(3) As used in this section, "victim" means that term as defined in section 411h of Act No. 328 of the Public Acts of 1931.

History: Add. 1992, Act 262, Eff. Jan. 1, 1993.

THE MICHIGAN PENAL CODE (EXCERPT)

Act 328 of 1931

750.411h Stalking; definitions; violation as misdemeanor; penalties; probation; conditions; evidence of continued conduct as rebuttable presumption; additional penalties.

Sec. 411h. (1) As used in this section:

(a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(c) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

(d) "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(e) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(i) Following or appearing within the sight of that individual.

(ii) Approaching or confronting that individual in a public place or on private property.

(iii) Appearing at that individual's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.

(v) Contacting that individual by telephone.

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

(f) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(2) An individual who engages in stalking is guilty of a crime as follows:

(a) Except as provided in subdivision (b), a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(3) The court may place an individual convicted of violating this section on probation for a term of not more than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

(a) Refrain from stalking any individual during the term of probation.

(b) Refrain from having any contact with the victim of the offense.

(c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and if, determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(4) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(5) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for any contempt of court arising from the same conduct.

History: Add. 1992, Act 260, Eff. Jan. 1, 1993;—Am. 1997, Act 65, Eff. Mar. 31, 1998.

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.411i Definitions; aggravated stalking; circumstances; violation as felony; penalty; probation; additional conditions of probation; effect of continued course of conduct; rebuttable presumption; additional penalty.

Sec. 411i. (1) As used in this section:

(a) "Course of conduct" means a pattern of conduct composed of a series of 2 or more separate noncontinuous acts evidencing a continuity of purpose.

(b) "Credible threat" means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.

(c) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(d) "Harassment" means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. Harassment does not include constitutionally protected activity or conduct that serves a legitimate purpose.

(e) "Stalking" means a willful course of conduct involving repeated or continuing harassment of another individual that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(f) "Unconsented contact" means any contact with another individual that is initiated or continued without that individual's consent or in disregard of that individual's expressed desire that the contact be avoided or discontinued. Unconsented contact includes, but is not limited to, any of the following:

(i) Following or appearing within the sight of that individual.

(ii) Approaching or confronting that individual in a public place or on private property.

(iii) Appearing at that individual's workplace or residence.

(iv) Entering onto or remaining on property owned, leased, or occupied by that individual.

(v) Contacting that individual by telephone.

(vi) Sending mail or electronic communications to that individual.

(vii) Placing an object on, or delivering an object to, property owned, leased, or occupied by that individual.

(g) "Victim" means an individual who is the target of a willful course of conduct involving repeated or continuing harassment.

(2) An individual who engages in stalking is guilty of aggravated stalking if the violation involves any of the following circumstances:

(a) At least 1 of the actions constituting the offense is in violation of a restraining order and the individual has received actual notice of that restraining order or at least 1 of the actions is in violation of an injunction or preliminary injunction.

(b) At least 1 of the actions constituting the offense is in violation of a condition of probation, a condition of parole, a condition of pretrial release, or a condition of release on bond pending appeal.

(c) The course of conduct includes the making of 1 or more credible threats against the victim, a member of the victim's family, or another individual living in the same household as the victim.

(d) The individual has been previously convicted of a violation of this section or section 411h.

(3) Aggravated stalking is a felony punishable as follows:

(a) Except as provided in subdivision (b), by imprisonment for not more than 5 years or a fine of not more than \$10,000.00, or both.

(b) If the victim was less than 18 years of age at any time during the individual's course of conduct and the individual is 5 or more years older than the victim, by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.

(4) The court may place an individual convicted of violating this section on probation for any term of years, but not less than 5 years. If a term of probation is ordered, the court may, in addition to any other lawful condition of probation, order the defendant to do any of the following:

(a) Refrain from stalking any individual during the term of probation.

(b) Refrain from any contact with the victim of the offense.

(c) Be evaluated to determine the need for psychiatric, psychological, or social counseling and, if determined appropriate by the court, to receive psychiatric, psychological, or social counseling at his or her own expense.

(5) In a prosecution for a violation of this section, evidence that the defendant continued to engage in a course of conduct involving repeated unconsented contact with the victim after having been requested by the victim to discontinue the same or a different form of unconsented contact, and to refrain from any further unconsented contact with the victim, gives rise to a rebuttable presumption that the continuation of the course of conduct caused the victim to feel terrorized, frightened, intimidated, threatened, harassed, or molested.

(6) A criminal penalty provided for under this section may be imposed in addition to any penalty that may be imposed for any other criminal offense arising from the same conduct or for contempt of court arising from the same conduct.

History: Add. 1992, Act 261, Eff. Jan. 1, 1993;—Am. 1997, Act 65, Eff. Mar. 31, 1998.

Constitutionality: Michigan's anti-stalking law is not an unconstitutionally vague threat to freedom of speech, *Staley v. Jones*, USCOA docket No. 00-1809 (2002).

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

764.15b Arrest without warrant for violation of personal protection order; answering to charge of contempt; hearing; bond; show cause order; jurisdiction to conduct contempt proceedings; prosecution of criminal contempt; prohibited actions by court; definitions.

Sec. 15b. (1) A peace officer, without a warrant, may arrest and take into custody an individual when the peace officer has or receives positive information that another peace officer has reasonable cause to believe all of the following apply:

(a) A personal protection order has been issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or is a valid foreign protection order.

(b) The individual named in the personal protection order is violating or has violated the order. An individual is violating or has violated the order if that individual commits 1 or more of the following acts the order specifically restrains or enjoins the individual from committing:

(i) Assaulting, attacking, beating, molesting, or wounding a named individual.

(ii) Removing minor children from an individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.

(iii) Entering onto premises.

(iv) Engaging in conduct prohibited under section 411h or 411i of the Michigan penal code, 1931 PA 328, MCL 750.411h and 750.411i.

(v) Threatening to kill or physically injure a named individual.

(vi) Purchasing or possessing a firearm.

(vii) Interfering with petitioner's efforts to remove petitioner's children or personal property from premises that are solely owned or leased by the individual to be restrained or enjoined.

(viii) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.

(ix) Any other act or conduct specified by the court in the personal protection order.

(c) If the personal protection order was issued under section 2950 or 2950a, the personal protection order states on its face that a violation of its terms subjects the individual to immediate arrest and either of the following:

(i) If the individual restrained or enjoined is 17 years of age or older, to criminal contempt of court and, if found guilty of criminal contempt, to imprisonment for not more than 93 days and to a fine of not more than \$500.00.

(ii) If the individual restrained or enjoined is less than 17 years of age, to the dispositional alternatives listed in section 18 of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18.

(2) An individual arrested under this section shall be brought before the family division of the circuit court having jurisdiction in the cause within 24 hours after arrest to answer to a charge of contempt for violating the personal protection order, at which time the court shall do each of the following:

(a) Set a time certain for a hearing on the alleged violation of the personal protection order. The hearing shall be held within 72 hours after arrest, unless extended by the court on the motion of the arrested individual or the prosecuting attorney.

(b) Set a reasonable bond pending a hearing of the alleged violation of the personal protection order.

(c) Notify the prosecuting attorney of the criminal contempt proceeding.

(d) Notify the party who procured the personal protection order and his or her attorney of record, if any, and direct the party to appear at the hearing and give evidence on the charge of contempt.

(3) In circuits in which the circuit court judge may not be present or available within 24 hours after arrest, an individual arrested under this section shall be taken before the district court within 24 hours after arrest, at which time the district court shall set bond and order the defendant to appear before the family division of circuit court in the county for a hearing on the charge. If the district court will not be open within 24 hours after arrest, a judge or district court magistrate shall set bond and order the defendant to appear before the circuit court in the county for a hearing on the charge.

(4) If a criminal contempt proceeding for violation of a personal protection order is not initiated by an arrest under this section but is initiated as a result of a show cause order or other process or proceedings, the court shall do all of the following:

(a) Notify the party who procured the personal protection order and his or her attorney of record, if any, and direct the party to appear at the hearing and give evidence on the contempt charge.

(b) Notify the prosecuting attorney of the criminal contempt proceeding.

(5) The family division of circuit court in each county of this state has jurisdiction to conduct contempt proceedings based upon a violation of a personal protection order described in this section issued by the circuit court in any county of this state or upon a violation of a valid foreign protection order. The court of arraignment shall notify the court that issued the personal protection order or foreign protection order that the issuing court may request that the defendant be returned to that court for violating the personal protection order or foreign protection order. If the court that issued the personal protection order or foreign protection order requests that the defendant be returned to that court to stand trial, the county of the requesting court shall bear the cost of transporting the defendant to that county.

(6) The family division of circuit court has jurisdiction to conduct contempt proceedings based upon a violation of a personal protection order issued pursuant to section 2(h) of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.2, by the family division of circuit court in any county of this state or a valid foreign protection order issued against a respondent who is less than 18 years of age at the time of the alleged violation of the foreign protection order in this state. The family division of circuit court that conducts the preliminary inquiry shall notify the court that issued the personal protection order or foreign protection order that the issuing court may request that the respondent be returned to that county for violating the personal protection order or foreign protection order. If the court that issued the personal protection order or foreign protection order requests that the respondent be returned to that court to stand trial, the county of the requesting court shall bear the cost of transporting the respondent to that county.

(7) The prosecuting attorney shall prosecute a criminal contempt proceeding initiated by the court under subsection (2) or initiated by a show cause order under subsection (4), unless the party who procured the personal protection order retains his or her own attorney for the criminal contempt proceeding or the prosecuting attorney determines that the personal protection order was not violated or that it would not be in the interest of justice to prosecute the criminal contempt violation. If the prosecuting attorney prosecutes the criminal contempt proceeding, the court shall grant an adjournment for not less than 14 days or a lesser period requested if the prosecuting attorney moves for adjournment. If the prosecuting attorney prosecutes the criminal contempt proceeding, the court may dismiss the proceeding upon motion of the prosecuting attorney for good cause shown.

(8) A court shall not rescind a personal protection order, dismiss a contempt proceeding based on a personal protection order, or impose any other sanction for a failure to comply with a time limit prescribed in this section.

(9) As used in this section:

(a) "Foreign protection order" means that term as defined in section 2950h of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950h.

(b) "Personal protection order" means a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, and, unless the context indicates otherwise, includes a valid foreign protection order.

(c) "Valid foreign protection order" means a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

History: Add. 1980, Act 471, Eff. Mar. 31, 1981;—Am. 1983, Act 230, Imd. Eff. Nov. 28, 1983;—Am. 1992, Act 251, Eff. Jan. 1, 1993;—Am. 1994, Act 59, Eff. July 1, 1994;—Am. 1994, Act 62, Eff. July 1, 1994;—Am. 1994, Act 418, Eff. Apr. 1, 1995;—Am. 1996, Act 15, Eff. June 1, 1996;—Am. 1998, Act 475, Eff. Mar. 1, 1999;—Am. 1999, Act 269, Eff. July 1, 2000;—Am. 2001, Act 209, Eff. Apr. 1, 2002.

THE CODE OF CRIMINAL PROCEDURE (EXCERPT)

Act 175 of 1927

771.2a Probation for not more than 5 years; probation for term of years; order fixing period and conditions of probation; applicability of section to certain juveniles; probation for not less than 5 years; conditions; residing or working within school safety zone; exemption; definitions.

Sec. 2a. (1) The court may place an individual convicted of violating section 411h of the Michigan penal code, 1931 PA 328, MCL 750.411h, on probation for not more than 5 years. The sentence is subject to the conditions of probation set forth in section 411h(3) of the Michigan penal code, 1931 PA 328, MCL 750.400h, and section 3 of this chapter. The probation is subject to revocation for any violation of a condition of that probation.

(2) The court may place an individual convicted of violating section 411i of the Michigan penal code, 1931 PA 328, MCL 750.411i, on probation for any term of years, but not less than 5 years. The sentence is subject to the conditions of probation set forth in section 411i(4) of the Michigan penal code, 1931 PA 328, MCL 750.411i, and section 3 of this chapter. The probation is subject to revocation for any violation of a condition of that probation.

(3) The court shall by order, to be filed or entered in the cause as the court directs by general rule or in each case, fix and determine the period and conditions of probation. The order is part of the record in the cause. The court may amend the order in form or substance at any time.

(4) Subsections (1), (2), and (3) do not apply to a juvenile placed on probation and committed under section 1(3) or (4) of chapter IX to an institution or agency described in the youth rehabilitation services act, 1974 PA 150, MCL 803.301 to 803.309.

(5) Except as otherwise provided by law, the court may place an individual convicted of a listed offense on probation subject to the requirements of this subsection and subsections (6) through (11) for any term of years but not less than 5 years.

(6) Except as otherwise provided in subsections (7) to (11), if an individual is placed on probation under subsection (5), the court shall order the individual not to do any of the following:

- (a) Reside within a student safety zone.
- (b) Work within a student safety zone.
- (c) Loiter within a student safety zone.

(7) The court shall not impose a condition of probation described in subsection (6)(a) if any of the following apply:

- (a) The individual is not more than 19 years of age and attends secondary school or postsecondary school,

and resides with his or her parent or guardian. However, an individual described in this subdivision shall be ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends secondary school or postsecondary school in conjunction with that school attendance.

(b) The individual is not more than 26 years of age, attends a special education program, and resides with his or her parent or guardian or in a group home or assisted living facility. However, an individual described in this subdivision shall be ordered not to initiate or maintain contact with a minor within that student safety zone. The individual shall be permitted to initiate or maintain contact with a minor with whom he or she attends a special education program in conjunction with that attendance.

(c) The individual was residing within that student safety zone at the time the amendatory act that added this subdivision was enacted into law. However, if the individual was residing within the student safety zone at the time the amendatory act that added this subdivision was enacted into law, the court shall order the individual not to initiate or maintain contact with any minors within that student safety zone. This subdivision does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(8) An order issued under subsection (6)(a) shall not prohibit an individual from being a patient in a hospital or hospice that is located within a student safety zone. However, this exception does not apply to an individual who initiates or maintains contact with a minor within that student safety zone.

(9) The court shall not impose a condition of probation described in subsection (6)(b) if the individual was working within the student safety zone at the time the amendatory act that added this subsection was enacted into law. However, if the individual was working within the student safety zone at the time the amendatory act that added this subsection was enacted into law, the court shall order the individual not to initiate or maintain contact with any minors in the course of his or her employment within that student safety zone. This subsection does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(10) The court shall not impose a condition of probation described in subsection (6)(b) if the individual only intermittently or sporadically enters a student safety zone for purposes of work. If the individual intermittently or sporadically works within a student safety zone, the court shall order the individual not to initiate or maintain contact with any minors in the course of his or her employment within that safety zone. This subsection does not prohibit the court from allowing contact with any minors named in the probation order for good cause shown and as specified in the probation order.

(11) The court may exempt an individual from probation under subsection (5) if any of the following apply:

(a) The individual has successfully completed his or her probationary period under sections 11 to 15 of chapter II for committing a listed offense and has been discharged from youthful trainee status.

(b) The individual was convicted of committing or attempting to commit a violation solely described in section 520e(1)(a) of the Michigan penal code, 1931 PA 328, MCL 750.520e, and at the time of the violation was 17 years of age or older but less than 21 years of age and is not more than 5 years older than the victim.

(12) As used in this section:

(a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(b) "Loiter" means to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors.

(c) "Minor" means an individual less than 18 years of age.

(d) "School" means a public, private, denominational, or parochial school offering developmental kindergarten, kindergarten, or any grade from 1 through 12. School does not include a home school.

(e) "School property" means a building, facility, structure, or real property owned, leased, or otherwise controlled by a school, other than a building, facility, structure, or real property that is no longer in use on a permanent or continuous basis, to which either of the following applies:

(i) It is used to impart educational instruction.

(ii) It is for use by students not more than 19 years of age for sports or other recreational activities.

(f) "Student safety zone" means the area that lies 1,000 feet or less from school property.

History: Add. 1992, Act 251, Eff. Jan. 1, 1993;—Am. 1998, Act 520, Imd. Eff. Jan. 12, 1999;—Am. 2005, Act 126, Eff. Jan. 1, 2006